

October 15, 2018

Ms. Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

Re: Promoting Investment in the 3550-3700 MHz Band, **GN Docket No. 17-258**;
Unlicensed Use of the 6 GHz Band, **ET Docket No. 18-295**;
Expanding Flexible Use in Mid-Band Spectrum between 3.7 and 24 GHz, **GN Docket No. 17-183**.

Dear Ms. Dortch:

On October 11, 2018, Phillip Berenbroick of Public Knowledge, Michael Calabrese of New America's Open Technology Institute, and Cat Blake of Next Century Cities (collectively "Public Interest Spectrum Coalition" or "PISC" representatives) met with Rachael Bender of Chairman Pai's office to discuss issues in the above-captioned proceeding.

The PISC representatives urged the Federal Communications Commission ("Commission") to modify the draft Report and Order ("*draft R&O*")¹ to include census tract areas and to require meaningful build out requirements to rural America, including interim performance requirements as detailed in the attached proposal. Compared to the Commission's current 3.5 GHz CBRS rules that were adopted with a 5-0 vote in 2015 and created census tract size licenses for the CBRS Priority Access Licenses ("PALs"),² the current proposal makes licensed spectrum unobtainable for small providers eager to serve rural and other underserved areas. By expanding the size of the PALs to counties, the *draft R&O* makes it almost certain that the CBRS PALs are acquired by the largest national and regional wireless carriers, and large cable operators – the same providers who have consistently refused to provide rural America with real, reliable, and affordable broadband access.

The PISC representatives explained that the record clearly demonstrates that the *draft R&O*'s proposal to expand the size of the PALs from census tracts to counties places the cost of licenses out of reach for small rural providers that are most likely to actually serve rural areas. The PISC representatives noted that the even counties that are classified as rural often have a mix of more densely occupied population centers and sparsely populated areas.³ Those population

¹ Promoting Investment in the 3550-3700 MHz Band, GN Docket No. 17-258, *Report and Order*, FCC-CIRC1810-02 (circulated Oct. 2, 2018) ("*Draft R&O*").

² Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 Band, GN Docket No. 12-354, *Report and Order and Second Further Notice of Proposed Rulemaking*, 30 FCC Rcd 3959 (2015).

³ For example, the U.S. Census Bureau estimates that Labette County, Kansas had a population of approximately 20,145 in 2017, while its largest city, Parsons, Kansas had a population of 9,761. See U.S. Census Bureau, American FactFinder, Annual Estimates of Resident Population: April 1 2010 – July 1, 2017.

centers are likely to attract bidders that can outspend the small, community-based providers whose business model would be to deploy service across all parts of the coverage area. In contrast, large national and regional wireless carriers, and large cable operators rarely build out beyond the areas of highest population density where return on investment is highest. Without census tract sized licenses, rural communities will continue to be left on the wrong side of the digital divide.

The *draft R&O*'s proposed performance requirements only exacerbate this problem. The *draft R&O* proposes to adopt a performance requirement that licenses deploying point-to-multipoint service must offer service over at least fifty percent of the population of the license area by the end of the ten year license term.⁴ This approach clearly discourages deployments and service in rural, small town and other less-densely-populated areas of a county in three ways:

First, because it offers no meaningful check on warehousing, or on limiting build out to high-revenue areas, except after 10 years – an eternity in relation to the economic imperative for 5G everywhere.

Second, because even in large counties with very substantial rural and small town populations, serving half a county's population can be satisfied by limiting deployment to the county seat or an overlapping metro market. We provided the counties including Sioux Falls, South Dakota and Parsons, Kansas as prime and not atypical examples.⁵

Third, because it can be anticipated that large national and regional mobile carriers lack sufficient financial incentive to build out within five-to-ten years to less populated areas in a county, the Commission should provide a strong incentive for PAL holders to partition the license, or at least lease capacity to WISPs and other operators willing and able to serve more sparsely populated rural areas.

To address these concerns, the PISC representatives strongly urged the Commission to adopt an ***interim performance requirement*** that would impose a “keep what you are using” requirement at the end of five years. A summary is appended to this letter. We proposed that unserved census tracts within the county should be partitioned and default to General Authorized Access status either permanently, or at least for the duration of the license period. To account for

2010 – July 1, 2017.

⁴ *Draft R&O* at 33 ¶ 60.

⁵ *See supra* note 3. Additionally, the county seat of Labette County, Kansas is Oswego, Kansas, which the Census Bureau estimated to have a 2017 population of 1,719. Combined, Parsons and Oswego had a 2017 population of 11,480, or approximately 57 percent of the population of Labette County. Labette County covers 645.30 square miles; however, a 3.5 GHz license holder could comply with the proposed performance obligations while only serving two towns and failing to deploy to over 8,600 people. *See* U.S. Census Bureau, QuickFacts, Labette County, Kansas, <https://www.census.gov/quickfacts/fact/table/labettecountykansas/PST045217> (last visited Oct. 15, 2018). The Census Bureau estimated that in 2017 Sioux Falls, South Dakota had a population of 176,888, and Minnehaha County, South Dakota, which contains the majority of Sioux Falls, had an estimated 2017 population of 186,616. *See* U.S. Census Bureau, American FactFinder, Annual Estimates of Resident Population: April 1 2010 – July 1, 2017.

flexible use (e.g., broadband, IoT), PAL performance after five years could be satisfied objectively by either: (1) a substantial number of registered and operating Citizen Band Service Devices (“CBSD”); or (2) deployments that offer services to thirty percent or more of the population.

In addition, census tracts partitioned or leased to third parties prior to the five-year performance date should be exempt (but still subject to the ten-year requirement), thereby encouraging secondary market transactions within five years.

This interim performance review could be accomplished while imposing little administrative burden on the Commission despite the relatively large number of PALs. Performance review after five years can be based on a consolidated report by the Spectrum Access Systems of CBSDs registered and in active operation, which includes all base stations and access points operating on PAL channels. Collectively the SAS operators will know the precise location of all CBSD base stations that are operational. Moreover, although census tracts partitioned for failure to meet performance requirements could be auctioned at the end of the license term, defaulting them to GAA is administratively easier and gives GAA users long-term assurance they will not be preempted later in that census tract.

Finally, the PISC representatives expressed general support for the draft Notice of Proposed Rulemaking to authorize unlicensed use of the 6 GHz band.⁶ The proposal represents a critical next step in expanding the spectrum available for gigabit-fast Wi-Fi and other unlicensed innovation while fully protecting licensed incumbents. The PISC representatives strongly support shared, unlicensed use of available capacity across the entire band, from 5925 to 7125 GHz.

It should be possible for the Commission to fairly quickly authorize at least low-power, indoor-only use across all four band segments even if the authorization of a frequency coordination system for outdoor use takes a bit longer to develop. We also emphasized that the Commission should ensure that the rules governing unlicensed use of the 5925-7125 GHz band enables off-the-shelf consumer Wi-Fi routers and related broadband devices – and not only enterprise Wi-Fi that might involve professional installation or other barriers to deployment in the typical home or small business.

In accordance with Section 1.1206(b) of the Commission’s rules, an electronic copy of this letter is being filed in the above-referenced docket. Please contact me with any questions regarding this filing.

Sincerely,

⁶ Unlicensed Use of the 6 GHz Band, Expanding Flexible Use in the Mid-Band Spectrum Between 3.7 and 24 GHz, ET Docket No. 18-295, GN Docket No. 17-183, *Notice of Proposed Rulemaking*, FCC-CIRC1810-01 (circulated Oct. 2, 2018).

/s/ Phillip Berenbroick

Senior Policy Counsel
Public Knowledge

cc: Rachael Bender

PISC Proposal for Interim PAL Performance Requirement

Goals & Benefits

- Need stronger incentives to serve rural and small town areas – or to partition or lease to ISPs that will;
- Unserved Census Tracts should be partitioned/leased by the PAL holder within 5 years – or default to GAA;
- If a Census Tract defaults to GAA, WISPs and other operators in underserved areas are relieved of the uncertainty that their use on a GAA basis could be preempted.

5-year Interim Performance by Census Tract:

- **Incentives to Serve Entire County:** Performance metrics by Census Tract (CT) encourages deployment, partitioning and/or leasing in all areas of county, not just cities/suburbs.

“Keep What You Use”:

- After 5 years, PAL holder retains CTs meeting performance requirements;
- CTs not meeting performance requirements are automatically partitioned and default to GAA (either permanently or at least for the duration of the license term).
- CTs partitioned or leased to third parties prior to the 5-year performance date are exempt (but still subject to the 10-year metric).

Alternative Safe Harbor: To account for flexible use (e.g., broadband, IoT), PAL performance could be satisfied objectively by either:

- A substantial number of registered and operating CBSDs;
- Deployments offering services to 30% or more of the population.

No FCC Administrative Burden:

- Performance review after 5 years based on a consolidated SAS report of CBSDs registered and in active operation.
- CTs partitioned for failure to meet performance requirements could be auctioned at the end of license term – but defaulting to GAA is administratively easier and gives GAA users long-term assurance they will not be preempted later in that CT.